But in importing the socks he did the thing forbidden by the statute even if he had no fraudulent or dishonest intent.

However, the Legislature has provided two methods by which he may escape punishment, one being that he "acted innocently" and these words do not imply that he took precautions nor does he bring himself within them of proving that he had no fraudulent or dishonest intent.

Under what circumstances then can a defence under (c) be established?

Lord Coleridge in *Stone* v. *Burn*, (1911) 1 K.B. 933 says "such innocence can only exist when the infraction was committed by inadvertence or mistake of fact. Here the appellant knew all the facts—his only mistake was as to the effect of the statute." But mistake of fact does not include such a mistake as *bona fide* belief that artificial silk stockings are made of real silk or that Japanese socks do not bear an English trade mark.

Stone v. *Burn* like *Allard* v. *Selfridge* was a case under an English section which involved the defendant having physical possession of the offending article and therefore opportunity to take precaution. The section in the Colony Ordinance, however, covers "imports," a word which is not in the English section, and a person may import but nevertheless fail to secure physical possession by reason of the article being seized by Government officers before it comes into his pnysical possession. The Ordinance intends that there should be two possible defences to a person who imports. It was very difficult to take precautions. In the English cases and in *Ewe Kai Cheah* v. *Rex* it was not impossible. If therefore "otherwise acted innocently" as applied to importing when the accused does not get physical possession is to be restricted to acting inadvertently, neither defence would be available for I do not see how inadvertence can arise.

I find it difficult to imagine how an importer who does not get possession can ever have any defence such as the legislature intends him to have if in such a case "acted innocently" is to be confined to an act of inadvertence. On the other hand it seems to me to be impossible to give clause (c) one interpretation when applied to the word "imports" and an entirely different interpretation when applied to the next three verbs in the same section.

I am therefore of opinion that assuming the appellant's story to be true he had brought himself within neither (a) nor (c).

The learned District Judge does not appear to have considered whether the appellant's story that he had not ordered these socks and did not know they bore a trade mark was true, and if the view which I have reluctantly taken is correct it was unnecessary for him to have considered it. I add this because I do not suppose that the District Judge intended to imply by the opening words of his grounds for judgment that he rejected the appellant's evidence just because other accused persons in other cases unsuccessfully put up the same statutory defences.

I dismiss the appeal.

Appeal dismissed.

Solicitors for appellant:—*Drew & Napier.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

January 29, 1938.

TAN TENG (m.w.) v. S. S. T. K. R. KARUPPAN CHETTIAR.

[SINGAPORE SUIT No. 67 of 1937.]

Writ of Seizure and Sale—Damages for wrongful seizure and detention—Proof of malice and of want of reasonable and probable cause unnecessary.

The defendant obtained a writ of seizure and sale against the goods and chattels of a judgment debtor and he instructed the bailiff to seize certain property which he thought was the property of the judgment debtor but which in fact was the property of the plaintiff a person against whom there was no judgment. The writ of seizure and sale did not authorise the seizure of the plaintiff's goods.

Held, that it was unnecessary that the plaintiff should prove malice and want of reasonable and probable cause, the wrongful seizure being itself an actionable trespass.

Chop Chye Hin Chong v. *Ng Yeok Seng*, (1934) M.L.J. 265 distinguished.

ACTION.

M. Mitter for plaintiff.

Tampoe-Phillips for defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

MCELWAINE, C.J.—This is an action for damages for the seizure and detention of a twakoh, the property of the plaintiff.

The defendant had obtained a writ of seizure and sale against the goods and chattels of a judgment debtor and he pointed out to the bailiff four twakohs which he thought were the property of the judgment debtor. The bailiff seized the four twakohs, one of which was the property of the plaintiff, a person against whom there was no judgment. The writ did not authorise the seizure of her goods.

I reserved my decision as Mr. Tampoe Phillips argued that the plaintiff had no cause of action in the absence of proof of malice and want of reasonable and probable cause and cited in support a case of *Chop Chye Hin Chong* v. *Ng Yeok Seng*, 3 M.L.J. 265.

I see no resemblance between the case cited and the present. That was an action for distraining two months' rent when only one month's rent was due. The distress was levied under a warrant issued by a Court and it was held that distress for an excessive sum authorised by a warrant of a Court was not actionable unless the plaintiff proved that the landlord (the defendant in the case) had procured the issue of the writ maliciously and without reasonable and probable cause, and the District Judge had found that there was no malice.

In the present case the Court process the writ of execution authorised the seizure and sale of the goods of an entirely different person and the defendant caused to be seized the goods of the plaintiff against which he had no colour of claim. I think it clear that this was an actionable trespass. *Glasspoole* v. *Young*, 109 E.R. 259; *Garland* v. *Carlisle*, 7 E.R. 263. See too *West* v. *Automatic Salesman*, 53 T.L.R. 711.

In any case while I find that the defendant did not act maliciously he took no proper care to find out who owned the twakoh, the subject of this suit.

The plaintiff claims $644 as damages made up as follows:—for loss of earnings of the twakoh for two days $40; for loss of wages of the employees for two days $4; special damages $600.

I find that the twakoh was seized between 2 and 3 p.m. on 26th November 1936, and was released, the mistake having been found out, at midday on 27th November. The twakoh had ceased unloading at 1 p.m. on the day she was seized. The twakoh went to sea and got cargo on the afternoon of the day on which she was released.

I therefore allow for one day's detention $20 and for one day's coolies wages $2.

The plaintiff suffered no further injury but as she was undoubtedly hindered of her right she is entitled to some special damages. I think $25 is ample. There will therefore be judgment for the plaintiff for $47.

This case should not have been brought in the High Court. Mr. Mitter said his client had forced him to bring it in this Court, but I think counsel would have been quite justified in refusing to carry out such instructions. The defendant has been put to the expense of defending in the High Court a case which was obviously one for the District Court.

No order as to costs.

Order accordingly.

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